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June 10, 1997

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Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

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JUN 10 1997

Federal Communications Commission
Office of Secretary

**Re: Application of Ameritech Michigan Pursuant to Section 271 of
the Telecommunications Act of 1996 to Provide In-Region
InterLATA Services in Michigan (CC Docket 97-137)**

Dear Mr. Caton:

Pursuant to the FCC's Public Notice DA 97-1072, released May 21, 1997, enclosed for filing in the above-referenced docket are the original and six copies of the public (redacted) version of the "Comments of WorldCom, Inc. in Opposition to Ameritech-Michigan Application for InterLATA Authority." We also have enclosed an original and six copies of the proprietary version of the comments, which are confidential, subject to protective order. We have also enclosed a diskette containing the public version of the comments and certain of the exhibits in WordPerfect 5.1 format.

Please return a date-stamped copy of the enclosed (copy provided)

Respectfully submitted,


Linda L. Oliver
Counsel for WorldCom, Inc.

Enclosures

cc: Ameritech (Kelly R. Welsh, John M. Dempsey, John Gockley, Stephen M. Shapiro,
Kenneth S. Geller, Antoinette Cook Bush)
Dorothy Wideman, Secretary Michigan PSC
Donald Russell, Department of Justice
ITS, Inc.
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Commenter: WorldCom, Inc.
Applicant: Ameritech
State: Michigan
Date: June 10, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Application by Ameritech Michigan)
Pursuant to Section 271 of the)
Telecommunications Act of 1996)
to Provide In-Region, InterLATA)
Services in Michigan)

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JUN 10 1997

Federal Communications Commission
Office of Secretary

COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO AMERITECH-
MICHIGAN APPLICATION FOR INTERLATA AUTHORITY

PUBLIC VERSION

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Dated: June 9, 1997

EXECUTIVE SUMMARY

The sheer length of Ameritech's filing is testament to the complexity of the issues that are presented by the filing of a Section 271 application at this early stage of implementation of the Act. The FCC should not attempt to address the innumerable legal, regulatory, and factual issues the application presents. Instead, the FCC should deny the application on the basis of one or more of the obvious facial defects of the application. ^{1/} These include:

- Ameritech does not even *offer* a true unbundled local switching element, much less actually *provide* one, even though carriers have requested it.
- There are no permanent prices for unbundled network elements that have been determined by the State commission to be compliant with Section 251(d).
- Ameritech has failed to demonstrate that the operating company and its interLATA affiliate will have "separate directors" as required under Section 272(b)(3).
- Ameritech's definitions of unbundled local switching ("ULS") and transport are in facial violation of the Act and the FCC rules in each of the following respects:
 - Ameritech continues to collect terminating access charges in connection with ULS.
 - Ameritech fails to provide ULS purchasers with nondiscriminatory access to Ameritech's interoffice transport facilities for local call completion ("shared" or "common" transport).

^{1/} Indeed, some of the issues that will have to be addressed ultimately, before grant of an interLATA application, do not even exist yet. For example, the Michigan Commission has yet to set actual prices for unbundled network elements. And many operational issues have not yet arisen yet because Ameritech is not yet operational with respect to some checklist items, such as unbundled local switching and transport.

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- Ameritech's reluctant "interim" proposal to offer a version of ULS and common/shared transport cannot form the basis for Section 271 authorization because it does not cure the defects of its offering.
- The experiences of MFS and other carriers demonstrate that Ameritech's operational support systems ("OSS") do not ensure that competitive carriers can obtain nondiscriminatory access to the operational functions they need to enter local markets and successfully serve end users at commercial demand levels.

Given the aggressive time frame established by the Act for consideration of Section 271 applications, the Commission would be justified in summarily denying Ameritech's application based on any one of these individual deficiencies. When they are viewed together, there is no doubt that denial of the application is necessary and appropriate.

While the Commission need not and should not reach the public interest test here, moreover, it is also clear that the public interest would be harmed by Ameritech's entry at this premature stage, and that Ameritech could not demonstrate today that "irreversible competition" is present in Michigan.

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Services in Michigan)	

**COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO AMERITECH-
MICHIGAN APPLICATION FOR INTERLATA AUTHORITY**

WorldCom, Inc., hereby submits its comments on the Section 271 application for in-region interLATA authority filed by Ameritech-Michigan on May 21, 1997. 2/

INTRODUCTION

WorldCom -- with its traditional long distance operations, its MFS subsidiary's leading competitive local exchange carrier ("CLEC") business, and its UUNet Internet service provider affiliate -- is uniquely positioned to take advantage of the opportunities presented by the 1996 Act to bring a wide range of choices for telecommunications and information services to customers everywhere. WorldCom's ability and that of others to provide competing local exchange and full service offerings depends entirely on the success of the BOCs' implementation of the 1996 Act. In particular, WorldCom needs nondiscriminatory access to Ameritech's unbundled

2/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (hereafter "1996 Act" or "Act"), 47 U.S.C. § 271.

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network elements, at cost-based rates, with the ability to combine those elements in any configuration with each other and with WorldCom's own facilities. WorldCom also needs the operational support systems that give it the practical, as well as the theoretical, ability to be a local service provider over Ameritech's network. As Ameritech's Section 271 application makes clear, the FCC is a long way from the point at which it can declare that the Act is fully implemented and that the opportunities it provides for competitive entry into the local market are truly available.

Ameritech's application relies on its interconnection agreements with MFS and two other carriers to satisfy Section 271(c). We focus much of our comments on the significant operational difficulties that MFS has already experienced in Michigan. We also describe the serious impact these problems have had on MFS's practical ability to hold itself out as a local telephone company in competition with Ameritech. MFS's experience is not unique; others will undoubtedly report the same and other problems.

It will be an easy matter for Ameritech to add long distance service to its local customers. It can take advantage -- as it has already for its wireless and out-of-region activities -- of the existence of at least four competing nationwide interexchange networks and an automated primary interexchange carriers (PIC)-change process. That process has the capability of switching long distance carriers for more than 30 million customers annually. ^{3/} The local exchange market in Michigan today stands in

^{3/} Motion of AT&T to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995) at para. 53.

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stark contrast. The FCC's goal should be to ensure that changing local carriers will be as easy as changing long distance providers, and that consumers everywhere will have real choices of local and full-service providers. ^{4/} The danger of prematurely allowing Ameritech to provide in-region interLATA service is explained vividly by none other than Ameritech's Chief Executive Officer, Richard Notebaert, who has been quoted as saying that:

"The big difference between us and them [GTE] is they're already in long distance. What's their incentive to cooperate?" ^{5/}

The Commission must not take away that incentive until the job of opening the local exchange to full competition is done.

I. AMERITECH HAS FAILED TO SATISFY THE COMPETITIVE PRESENCE TEST OF SECTION 271(C)(1)(A).

A. MFS Is Not Providing Telephone Exchange Service To Business And Residential Customers Predominantly Over Its Own Facilities.

MFS first began providing local exchange service in Michigan in May 1996. The company has a 128-mile fiber network in Detroit, operates one digital

^{4/} The FCC recognized the importance of this goal when it ordered incumbent LECs to switch a customer's local carrier as easily as its long distance carrier is switched today when the switch requires only a software change. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15711-12, ¶ 421 (1996) ("Local Competition Order"), pets. for review pending sub nom. Iowa Utilities Board v. FCC, No. 96-3321 et. al. (8th Cir., petition filed September 6, 1996).

^{5/} See "Holding the Line on Phone Rivalry, GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," Washington Post, October 23, 1996, at C12.

switch, and has operational collocation arrangements in 10 Ameritech central offices. 6/ At present, MFS provides local exchange services only to business customers, although it does intend to offer service to residential customers. The company serves a total of [xxxxx] business lines in the Detroit LATA, 79 percent of which are served by resale of Ameritech's Centrex and network access lines services. MFS provides only [xxx] access lines (2.2 percent of its lines) exclusively through its own facilities, and only [xxxx] access lines using a combination of its own switching facilities and Ameritech's unbundled loops. These actual numbers of MFS-installed and constructed loops and of in-service unbundled loops purchased by MFS are substantially lower than Ameritech alleges. 7/ Ameritech's data appear to be pulled out of thin air. In particular, Ameritech's assertion regarding the number of MFS-installed "on net" loops are nothing but fantasy, based on wildly unrealistic assumptions, such as an assumption that MFS provides local service to 80% of the lines in buildings passed by its network. 8/ Ameritech is thus incorrect in asserting that MFS provides "telephone

6/ The data summarized in this section are set forth in the Affidavit of David Schroeder, Vice President, MFS Intelenet of Michigan, Inc. at 3-4 ("Schroeder Affidavit") (attached hereto as Exhibit 1).

7/ Ameritech Brief at 11; Harris & Teece Affidavit, Ameritech Application, Volume 3.3, at 47, Table III.6: "Infrastructure Indicators - Michigan."

8/ Harris & Teece Affidavit, Volume 3.3, at 47, Table III.6, row 5 & footnote (b) ("Estimates for MCImetro, TCG and MFS are based on the following formula: Based on the Number of On-Net Buildings x 30 floors per building x 100 handsets per floor x 10:1 handsets per line out of PBX x .8 to reflect possible overlap of buildings by CLECs."). Ameritech's witnesses provide no basis for these unrealistic assumptions. Ameritech should be able, in any case, to avoid such speculation,

exchange service exclusively or predominantly over [its] own service facilities.” 9/

Because only a small percentage of MFS’s customers are served “predominantly” over MFS-owned facilities, Ameritech clearly cannot rely on the MFS situation to satisfy Section 271(c)(1)(A). 10/

Moreover, the fact that MFS is not presently providing local exchange service to any residential customers provides an independent ground for concluding that MFS does not qualify as a facilities-based carrier for purposes of Section 271(c)(1)(A). That paragraph of the statute calls for the presence of a competing carrier that provides exchange service “to residential *and* business subscribers,” not “to residential *or* business subscribers.”11/ In sum, Ameritech cannot point to MFS to satisfy Section 271(c)(1)(A).

**B. Given the Operational Problems That Have Plagued
Ameritech’s Unbundled Network Element Offerings,**

since Ameritech should at least know how many customers *Ameritech* has in each building.

9/ 47 U.S.C. § 271(c)(1)(A); Ameritech Brief at 12.

10/ Because 86 percent of MFS’ customers are served via resale, moreover, Ameritech’s argument that unbundled loops should count as a carrier’s “own” facilities is irrelevant.

11/ 47 U.S.C. 271(c)(1)(A) (emphasis added). Because of this statutory language, WorldCom also disagrees with the Department of Justice’s contention that “it does not matter whether the competitor reaches one class of customers -- e.g., residential -- only through resale, provided that the competitor’s local exchange services as a whole are provided ‘predominantly’ over its own facilities.” Addendum to Evaluation of the United States Department of Justice, Application of SBC Communications Inc. to Provide In-Region InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (filed May 21, 1997), at 3. The Commission need not reach this issue, however, to reject Ameritech’s Michigan application.

Ameritech Cannot Count Such Elements As A Competing Carrier's Own Facilities.

Ameritech cannot be permitted to "count" the unbundled loops obtained by MFS or any other carrier from Ameritech to satisfy the "predominantly facilities-based" test of Section 271(c)(1)(A). The Commission need not address Ameritech's argument that a carrier should be deemed to be using its own facilities if it "controls" the facilities underlying unbundled network elements purchased from a BOC, 12/ because the continuing implementation problems that have plagued MFS demonstrate that it certainly does not "control" any Ameritech facilities. As the Illinois Commerce Commission Staff witness, Charlotte TerKeurst, observed in addressing this same Ameritech argument in the Illinois Section 271 case: 13/

While I cannot rule out ever considering an unbundled network element to be the competitor's "own" facilities, the BOC should have to meet a high threshold of showing that the competing carrier has total control, or almost total control, over the unbundled network element. I am not aware of any network elements currently being offered for which such a threshold can be met. Certainly, Ameritech Illinois has not met such a threshold at this point. 14/

12/ Ameritech Brief at 12-14 & n.11.

13/ Investigation Concerning Illinois Bell Telephone Company's Compliance With Section 271 Of The Telecommunications Act of 1996, ICC Docket No. 96-0404 ("Illinois Section 271 Proceeding"). The Illinois Staff was responding to Ameritech prefiled testimony in the Illinois Section 271 case, which Ameritech later filed in the Michigan PSC Section 271 docket and which is part of the record in this case.

14/ TerKeurst Rebuttal Testimony at 11-12 (ICC Staff Ex. 1.01) in Illinois Commerce Commission Docket No. 96-0404.

The point is that unbundled elements must be the equivalent of one's own facilities in every sense of the word to justify reliance on them for purposes of the Section 271(c)(1)(A) competitive presence test.

C. Facilities-Based Competition Will Not Exceed A Fragile And *De Minimis* Level Until Ameritech Makes Fundamental Changes.

As Congress recognized, construction of local exchange facilities is a costly, time-consuming process. ^{15/} To justify this investment in facilities, a carrier must be able to begin building a customer base using facilities and services obtained from the incumbent LEC. In this case, the efforts of MFS and other carriers to build a customer base that might be able to support the construction of additional local facilities have been frustrated by Ameritech in two ways.

First, the quality of service MFS is able to provide to its customers has been reduced due to significant and continuing operational problems with Ameritech. As documented in the attached Schroeder Affidavit, the conversion of customers from Ameritech's service to MFS's service has been plagued by problems. ^{16/} Even when MFS is providing resold Centrex service, which Ameritech has been providing for years, there have been an increasing number of problems. ^{17/}

^{15/} Joint Explanatory Statement of the Committee of Conference to accompany Telecommunications Act of 1996, at 148 (Conference Report).

^{16/} See Schroeder Affidavit at 4-11.

^{17/} *Id.* at 6-9.

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The second major reason why MFS and other competitors have been unable to establish a presence in the local exchange market is the substantial percentage of customers that Ameritech has "locked up" with highly discounted long-term contracts that contain significant penalties for early termination. 18/ In many cases, the termination penalties contained in these contracts are great enough to offset any cost savings that the customer might enjoy as an MFS subscriber. Consequently, even when MFS is able to offer a more attractive service package, customers are unwilling to move their service away from Ameritech. 19/

These two obstacles -- dependence on Ameritech's service and facilities and the prevalence of long-term contracts -- are not unique to MFS.

It is clear that there is a vast difference between the presence of competitors and the presence of competition. Until new entrants in the local market are fully operational, Ameritech cannot satisfy the competitive presence test of Section 271(c)(1)(A).

18/ See, e.g. Complaint of Brooks Fiber Communications, filed March 21, 1997, Michigan Public Service Commission Case No. U-11350.]

19/ See Schroeder Affidavit at 18-21.

II. AMERITECH HAS NOT SATISFIED THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.

A. Ameritech Is Not Actually Providing All Checklist Items, Contrary To The Plain Requirement Of Section 271(c)(2)(B).

The plain language of Section 271(c)(2)(B) requires Ameritech to show that it is actually "providing" each checklist item. Until a requesting carrier actually is taking a checklist item, it is impossible for the FCC to determine whether it is being provided in compliance with Sections 251 and 252 of the Act, and whether the item has been "fully implemented" as required by Section 271(d)(3)(a)(i). Because Ameritech concedes that it is not yet providing unbundled local switching or common transport, it does not meet the checklist. 20/

This interpretation is mandated by the plain language of Section 271. The statute directly contrasts the terms "providing" and "generally offering," using the term "providing" 21/ in the context of Track A, 22/ in which the BOC has entered interconnection agreements with competitors, and using the term "generally offering" 23/ in the context of Track B, 24/ in which no potential competitors are

20/ Ameritech is beginning to conduct a trial to provide unbundled local switching to AT&T. See Kocher Affidavit, Ameritech Application, Volume 2.5, at 35-38. A trial cannot meet the requirement that an element must be "provided," although it is clear that requesting carriers, such as AT&T and WorldCom, are interested in ordering a compliant unbundled local switching (ULS) element. We discuss the deficiencies of Ameritech's current ULS offering below.

21/ 47 U.S.C. § 271(c)(2)(A)(i)(I).

22/ 47 U.S.C. § 271(c)(1)(A).

23/ 47 U.S.C. § 271(c)(2)(A)(i)(II).

present. 25/ Ameritech argues for equating "providing" with "generally offering." But if Congress had meant these two terms to have the same meaning it would have used the same words. Rather, "providing" must mean actually providing -- i.e., furnishing the element to actual purchasers -- as distinguished from "generally offering" -- i.e., stating a willingness to make the element available but not actively doing so to actual purchasers.

This interpretation also is consistent with the Congressional purpose in creating a competitive checklist in the first place. The checklist sets forth the basic items that competitors must have in order to compete. There is no checklist item that competitors have not already requested in negotiations or petitions and taken to arbitration, where necessary. Ameritech simply wants to avoid having to demonstrate, in the real world, that each checklist item is working.

Congress's use of the word "providing" underscores the importance of real-world usage of each element to test whether the BOC's offering is just and reasonable. If a BOC is not "providing" an element to actual purchasers, there is a strong indication that the terms and conditions under which the BOC is proposing to make it available are unreasonable. Ameritech's argument in this regard undermines itself:

[I]t is entirely possible that, *even if a BOC satisfies its obligations under Sections 251 and 252 and the Commission's regulations*, there may be certain checklist items that no carrier will choose to buy. Under such circumstances, if the term 'provide' were misinterpreted to mean 'actually furnish,' and if, *through no fault*

24/ 47 U.S.C. § 271(c)(1)(B).

25/ See also 47 U.S.C. § 271(d)(3)(A)(i) & (ii).

of the BOC, no Section 271(c)(1)(A) competitor elects to purchase a checklist item, the BOC could be indefinitely barred from obtaining Section 271(c)(1)(A) relief. 26/

But in Ameritech's case, the reason no carrier is currently using Ameritech's unbundled local switching and transport elements is not because no carrier is interested in those elements. To the contrary, WorldCom and numerous other carriers are intensely interested in those elements, and have fought long and hard for the right to order them. 27/ Rather, no carrier has ordered unbundled local switching from Ameritech precisely because Ameritech has failed to "satisf[y] its obligations under Sections 251 and 252 and the Commission's regulations." Lack of carrier orders for unbundled switching therefore is due specifically to "the fault of the BOC" 28/ -- Ameritech's continuing refusal to provide a compliant unbundled switching element. Ameritech should not be rewarded for its recalcitrance by being able to avoid proving full implementation of this critical checklist item through its actual provision.

26/ Ameritech Brief at 18; see generally id. at 18-20.

27/ As early as July 1995, WorldCom asked the Michigan PSC to order Ameritech to provide access to its network facilities, at economic cost, to permit competing carriers to provide local exchange and exchange access service. See Direct Testimony of Joseph Gillan, filed on behalf of WorldCom, Inc. (July 24, 1995), in In the Matter, on the Commission's Own Motion, to Establish Permanent Interconnection Arrangements Between Basic Local Exchange Service Providers Michigan PSC Case No. U-10860. WorldCom, AT&T, MCI, Sprint, and others have lobbied the FCC and state commissions for unbundled local switching and shared transport to be provided as defined by the FCC, have included them in negotiations and arbitrations (as AT&T and MCI have done in Michigan), and (in AT&T's case) have taken Ameritech to court over them.

28/ Ameritech Brief at 18.

Ameritech fails the test of "providing" unbundled local switching even under the Department of Justice's narrower reading of the standard for whether a BOC is "providing" an item. The Department states that "under some circumstances, a BOC may be 'providing' a checklist item under an agreement even though competitors are not actually using that item, *at least where no competitor is actually requesting and experiencing difficulty obtaining that item.* A BOC is providing an item, for purposes of checklist compliance, *if the item is available both as a legal and practical matter,* whether or not any competitors have chosen to use it." 29/ Ameritech has not made compliant versions of unbundled switching and shared transport available, either legally or practically, and competing carriers that desire those elements therefore have been unable to obtain them.

The experience of MFS in purchasing unbundled loops and in reselling Centrex service shows why it is essential to put into operation every checklist item in order to be sure that the items have been provided consistently with the Act and in a nondiscriminatory manner. Ameritech has actually provided unbundled loops and Centrex resale in Michigan for some time now, yet many significant problems remain to be resolved. These problems, described at greater length below, can seriously affect the ability of requesting carriers to provide service to existing customers and to attract new ones.

29/ Evaluation of the United States Department of Justice, Application of SBC Communications Inc. to Provide In-Region InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (filed May 16, 1997), at 22-23.

B. Ameritech's Unbundled Local Switching and Transport Offerings Violate the Act and the Commission's Rules

1. Ameritech's Unbundled Local Switching and Transport Elements Violate the Act and the FCC's Rules.

Ameritech -- apparently alone among the BOCs -- refuses to acknowledge that access to its common interoffice network ("common transport") is a "network element" that it must provide pursuant to Section 251(c)(3) of the Act. ^{30/} Ameritech also has lost its argument on common transport before four of the five state commissions in its region. ^{31/} It has nevertheless persisted in its refusal to make the network element combination available with common transport, therefore defeating the ability of entrants to employ a critical method for bringing competition to the local exchange in Ameritech's region. It also has refused to permit purchasers of unbundled

^{30/} In an appendix to a letter responding to a staff request about common transport, WorldCom attached examples of the common transport offerings of other RBOCs. See Letter from Linda L. Oliver, *et al.*, to William F. Caton, May 23, 1997, filed in CC Docket No. 96-98 and CC Docket No. 97-137 (Appendix). A copy of that letter and its appendix is attached to these comments as Exhibit 4.

^{31/} Petition of AT&T Communications of Michigan, Inc. for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan, Michigan Public Service Commission Case No. U-11151, Opinion and Order, February 28, 1997 at 8; Matters Relating to Satisfaction of Conditions for Offering InterLATA Service (Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin), Wisconsin PSC Docket No. 6720-TI-120, Findings of Fact, Conclusions of Law, and Second Order, May 29, 1997, at 43-50; Petition of AT&T Communications of Indiana, Inc., Requesting Arbitration of Interconnection Terms, Conditions, and Prices from GTE North Incorporated and Contel of the South Inc., Indiana Utility Regulatory Commission Cause No. 40571-INT 02, December 12, 1996, at 17-18; Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996, Hearing Examiner's Proposed Order, March 6, 1997, at 36.

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local switching to function as the interexchange access provider for its own local customers.

As AT&T has testified before the Illinois Commerce Commission, it has only been with the intervention of the Department of Justice that Ameritech has even been willing to discuss a test of combined network elements that would include common transport. ^{32/} The "Phase I" test does not test any of the platform-specific implementation issues, and the details of that "Phase II" test remain undetermined. As we show below, moreover, the Ameritech interim proposal for the network platform is no different than what Ameritech always has offered -- and goes no further toward satisfaction of the checklist. Because Ameritech refuses, even in the Phase II test, to permit entrants to pay cost-based rates for common transport and refuses to permit entrants to serve as the provider of interexchange access, even the future testing it is considering now will not resolve the implementation issues that exist with respect to combination of elements as the FCC mandated them to be provided.

In short, Ameritech continues to assert to itself the right to decide what network elements its competitors may use, and to refuse even to test the requested elements. Any delay in making the network elements platform operational thus must be laid squarely at Ameritech's doorstep.

^{32/} Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996, Transcript of Hearings at 2061-62 (May 7, 1997) (Testimony of AT&T Witness Sherry).

a. Ameritech Unlawfully Prohibits Purchasers of Unbundled Local Switching from Acting as the Access Provider.

Under Ameritech's definition of unbundled local switching and transport, purchasers of unbundled local switching would be unable to serve as the provider of originating and terminating access for interexchange calls placed to or from end users served via unbundled local switching.

The 1996 Act requires incumbent local exchange carriers such as Ameritech to provide network elements "in a manner that allows the requesting telecommunications carrier to provide *any telecommunications service* that can be offered by means of that network element." ^{33/} Originating and terminating interstate access are among the telecommunications services that can be provided using the unbundled local switching element. ^{34/} The FCC's rules implementing Section 251(c)(3) define unbundled network elements -- including the unbundled switching element -- as providing purchasers with the ability to provide originating and

^{33/} 47 C.F.R. § 51.307(c). This FCC rule, interpreting the similarly worded Section 251(c)(3) of the 1996 Act, 47 U.S.C. § 251(c)(3), has not been stayed by the U.S. Court of Appeals for the Eighth Circuit. See Iowa Utilities Board v. FCC, No. 96-3321, Order Granting Stay Pending Judicial Review, slip op. at 8-9 & n.3 (8th Cir., Oct. 15, 1996).

^{34/} See also AT&T Petition for a Total Local Exchange Wholesale Tariff; LDDS Petition for a Total Wholesale Network Service Tariff, Illinois Commerce Commission Docket Nos. 95-0458/95-0531 (consol.) (June 26, 1996) at 65.

terminating interexchange access to themselves and to be the sole access provider to itself or unaffiliated IXC's. 35/

In its First Reconsideration Order in CC Docket No. 96-98, the FCC made clear again that, *by definition*, the purchaser of unbundled elements (including purchasers of unbundled local switching), not the incumbent LEC, is entitled to collect the access charges associated with those elements. 36/ Last month, in the Access Reform Order, the FCC confirmed this principle --- again. 37/ The FCC reiterated that "payment of cost-based rates represents full compensation to the incumbent LEC for use of the network elements that carriers purchase" and that the Act does "not restrict the ability of carriers to use network elements to provide originating and terminating access."38/ These principles do not go to the *pricing* of network elements, moreover -- they go to their *definition*. Thus, when a requesting carrier purchases a network

35/ See 47 C.F.R. §§ 51.307(c); 51.309(b) ("A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers."). These non-pricing provisions of the FCC's interconnection regime have not been stayed.

36/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration, CC Docket No. 96-98, FCC 96-324, at ¶ 11 (released Sept. 27, 1996) ("First Reconsideration Order"). ("Thus, a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the *exclusive right* to provide all features, functions, and capabilities of the switch, *including switching for exchange access and local exchange service*, for that end user.") (emphasis added).

37/ Access Reform Order at para. 337. SBC has sought a stay from the FCC of the effectiveness of this and certain other portions of the Access Reform Order.

38/ Id.

element, it obtains *by definition* the ability to provide any service over that element -- including exchange access.

Ameritech's offering of unbundled local switching would be structured, however, in a manner that would deny competing carriers using unbundled local switching the unrestricted right to provide originating and terminating access service, and instead would preserve Ameritech's monopoly over such service. Specifically, Ameritech would impose its own terminating interexchange access charges for local switching in cases in which interexchange carriers choose to terminate traffic over Ameritech's transport network. 39/ This has the effect of denying the competitive carrier using the unbundled local switching the ability to provide (and charge its customers for) this service, in direct violation of Section 251(c)(3) of the Act and the FCC's rules. 40/ It also violates the requirement of Section 252(d)(1) that network element rates be cost-based, because it requires purchasers of unbundled elements to pay access charges (and to be precluded from recovering the cost of the network elements through access charges they collect from IXC's).

Ameritech's approach also overlooks the fact that interexchange carriers select the transport provider, while end users select the provider of loops and local

39/ See Edwards Affidavit, Ameritech Application, Volume 2.3, at 56. Ameritech concedes the ability of the ULS purchaser to collect access charges associated with local switching *only* when the interstate traffic is routed through the ULS trunk port -- that is, only where that IXC's traffic is routed separately through a different trunk port than the IXC would use to reach Ameritech's local customers resident in that switch. *Id.* See also Kocher Affidavit, Volume 2.5, at 40-41.

40/ See 47 C.F.R. §§ 51.307(c), 51.309(b); Local Competition Order at ¶¶ 356-65.

switching.^{41/} An end user that has selected one carrier as the local service provider, including loop and local switching, must be able to receive calls from and place calls to an IXC that has selected a different carrier as transport provider. Ameritech's approach would make that impossible. Instead, every carrier choosing to provide local exchange service using unbundled local switching would have to make a separate transport arrangement with every IXC wishing to complete calls to that end user -- and could not purchase switched transport from Ameritech without losing its ability to self-provide exchange access over its own unbundled switch and loop. ^{42/}

Thus, not only does Ameritech's approach deprive the ULS purchaser of the ability to function as access provider, it also forces unaffiliated IXCs to make separate transport arrangements with every ULS purchaser in order to terminate calls to those end users.

Put another way, as Ameritech would have it, the trunk ports purchased by IXCs for transport purposes cannot be used by those IXCs to terminate calls to any non-Ameritech end users resident in that switch. ^{43/} Ameritech claims those trunks

^{41/} This situation is no different from an ordinary meet-point billing arrangement, in which two incumbent LECs jointly provide access service and each receives revenues associated with the network functions it provides.

^{42/} Put differently, according to Ameritech, when an IXC uses Ameritech's switched transport offerings to reach a ULS end office -- as it would do to reach Ameritech's own subscribers served by that office -- the IXC would pay to Ameritech, and not to the ULS purchaser, the access charges associated with that local customer.

^{43/} Apparently Ameritech would be willing literally to complete those calls, but then it, and not the ULS purchaser, would charge for exchange access over the

ports only for its own local customers, denying other carriers resident in that switch the ability to receive and send calls through those IXC trunk ports. Yet the FCC has made it clear that the trunk ports are a shared resource of the switch and are a part of the unbundled local switching element. 44/

We conclude that a combination of a flat-rated charge for line ports, which are dedicated to a single new entrant, and either a flat rate or per-minute usage charge for the switching matrix and for trunk ports, *which constitute shared facilities*, best reflects the way costs for unbundled local switching are incurred and is therefore reasonable. 45/

Just because a trunk port is "dedicated" to the use of a particular IXC, moreover, does not mean that it is not "shared" from the perspective of the end users that are resident in the switch -- whether those end users are served by Ameritech or by a ULS purchaser. 46/ An analogous situation is the subscriber loop, which is common to all IXCs. IXCs share the ability to complete calls over that loop -- but the loop is dedicated to that end user. Conversely, a trunk port may be dedicated to a

unbundled loop and switch, even though the ULS purchaser has already paid for those items. See Kocher Affidavit at 34-35.

44/ The Local Competition Order describes the unbundled local switching element as including "the line-side *and trunk-side* facilities plus the features, functions, and capabilities of the switch." Local Competition Order at para. 412 (emphasis added).

45/ Local Competition Order at para. 810 (emphasis added).

46/ Thus, the fact that the FCC has created a separate transport rate element for the trunk port in its recent restructure of access transport does not change the fact that from the perspective of the local customers (and the ULS purchaser), that trunk port is shared. See Access Reform Order at para. 127.